

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

GENERAL MILK COMPANY

Claim No CU-0273

Decision No. CU -1043

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

William R. Driscoll, Esq.
General Counsel

Appeal and objections from a Proposed Decision entered on January 24, 1968.
No hearing requested.

Hearing on the record held on September 30, 1971.

FINAL DECISION

In its Proposed Decision the Commission found that claimant owned a 24% interest in two Cuban enterprises, Latas Modernas, S.A. and Compania Nacional de Alimentos, S.A. and that at the time of loss the ownership interest was valued at \$172,727.78 and \$937,838.14, respectively. The value determined was based upon book value of the enterprises predicated upon 1959 Balance Sheets.

Claimant filed objections to the Proposed Decision with respect to the method adopted by the Commission in determining the value and to the Commission's disallowance of certain expenditures made by claimant in favor of former employees. In addition claimant has amended its claim to include royalties assertedly due it from the aforementioned Compania Nacional de Alimentos. These matters will be treated separately.

Value

Claimant has submitted an affidavit of an expert who recommends that in determining the value of the subject Cuban entities the assets of the companies should not be ignored but that the emphasis should be placed on the

productivity of the business - its earning power. He suggests a formula assigning 20% to the net worth of the companies and 80% to the 1959 earnings, multiplied by a logical price earnings ratio. Accordingly, he computes as follows:

Latas Modernas, S.A.

20% of \$719,699	\$ 143,939.80
80% of 17.50 X \$80,683*	<u>1,129,562.00</u>
	\$1,273,501.80

24% = \$ 305,640.00

Compania Nacional de
Alimentos, S.A.

20% of \$3,907,658.92	\$ 781,531.78
80% of 15 X \$297,000*	<u>3,564,000.00</u>
	\$4,345,531.78

24% = \$1,042,927.62

* Figures from profit and loss statements.

Under the Act the Commission will take into account the basis of valuation most appropriate to the property and equitable to the claimant. The Commission has in other instances applied the method of the going concern value of a nationalized enterprise. However in applying this method the Commission is not bound by any particular formula suggested by a claimant. It has held that the going concern value may be based upon the average earnings of the enterprise over a period of several years, capitalized at 10%.

In the instant claim the going concern value would result in an evaluation for Latas Modernas of \$95,760.00 and for Compania Nacional de Alimentos \$614,620.00 (10 times the yearly average net profits of \$9,576 and \$61,462, respectively). However, the book value, as aforementioned, results in an allowance of \$172,727.78 and \$937,838.14. To adopt the going concern value herein would result in a value less than the value of claimant's assets as already determined. The going concern value on the basis of demonstrated earnings to investment is therefore minimal.

The Commission recognizes that the entities had suffered losses over and above the value of their physical assets. Based upon the complete record, the Commission finds that additional losses were suffered as follows:

Latas	-	\$ 199,498.30
Nacional	-	1,280,460.00

Based upon the claimant's 24% interest in these entities the Commission now finds that claimant's losses, including value of assets and additional losses, were \$220,607.38 for Latas and \$1,245,148.54 for Nacional.

Expenditures

Claimant states that between 1960 and 1964 it made payments, as its share of expenditures incurred in connection with former employees of the said Cuban enterprises, as follows:

1964	\$ 25,774
1963	12,138
1962	13,793
1961	24,704
1960	<u>25,869</u>
	\$102,278

Other than its statements no evidence has been submitted in support of this part of the claim. The expenditures are unexplained as to their nature, specific dates, parties concerned and nationality of the parties concerned. They do not appear to have been carried on any Balance Sheet and apparently occurred after October 13, 1960 the date of nationalization of the enterprises. The evidence fails to establish that the claimed loss constituted property under the Act and that the loss arose as a result of actions of the Government of Cuba. The burden of proof has not been met and, accordingly, this part of the claim is denied.

Royalties

Claimant states that in accordance with the terms of an agreement dated August 27, 1945, between Nestle (a Swiss company), GENERAL MILK COMPANY and Libby, McNeill & Libby, as shareholders in Compania Nacional de Alimentos, S.A., a Cuban corporation, any royalties from Compania Nacional de Alimentos, S.A. were to be distributed to the shareholders in proportion to their share ownership, as follows:

1. On this basis, GENERAL MILK COMPANY assertedly has due it royalties owed by Compania Nacional de Alimentos, S.A. and which are included in "Accounts Payable", as reflected in the audit report of Compania Nacional de Alimentos, S.A. as of December 31, 1959:

24% of \$446,071.16	=	\$107,057.07
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2. Royalties included in "Domestic and Foreign Creditors" shown as due GENERAL MILK COMPANY and Nestle, per Compania Nacional de Alimentos, S.A. balance sheet as at August 31, 1960, for the period July 1, 1959, to August 31, 1960:

24% of \$903,102.55	=	\$216,744.61
24% of \$ 89,882.52	=	21,571.80
Due GENERAL MILK		<u>\$238,316.41</u>

3. Estimated net royalties due from Compania Nacional de Alimentos, S.A. for the period September 1, 1960, to date of nationalization on October 13, 1960:

24% of \$118,915.58	=	\$ 28,539.74
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This estimate was made on the basis of royalties paid by Compania Nacional de Alimentos, S.A. for the same months during the years 1955 to 1959.

Total royalties assertedly due GENERAL MILK COMPANY	\$373,913.22
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As to item (1) of royalties, the balance sheet of December 31, 1959 under current liabilities lists a total figure in the amount of \$1,849,929.84 for "accounts payable, accrued charges, etc." No schedule has been submitted to reflect that of this total amount the sum of \$446,071.16 is allocated to royalties and that said royalties were payable to Nestle, which in turn was to distribute in certain proportions to other shareholders. The evidence does not warrant the conclusions drawn. The burden of proof has not been met and accordingly this part of the claim is denied.

Item (2) The schedule to the Balance Sheet of August 31, 1960 has been submitted and the Commission finds that claimant was owed royalties by Nacional de Alimentos in the amount of \$238,316.41 based on its 24% ownership.

Item (3) Claimant bases claim for anticipated royalties for the months of September and October, 1960 on realized royalties for the same two calendar months in the years 1955 to 1959. The Commission finds that the evidence of record supports this part of the claim. Accordingly, the Commission finds that the net royalties for the specified period were \$118,915.58 and claimant's 24% had a value of \$28,539.74 at the time of loss.

The aggregate amount of claimant's losses is summarized as follows:

<u>Item</u>	<u>Value</u>
Stock Interests:	
Latas Modernas (24%)	\$ 220,607.38
Nacional de Alimentos (24%)	1,245,148.54
Total Royalties from Alimentos	<u>266,856.15</u>
Total	\$1,732,612.07

The Commission concludes that as a result of nationalization of Latas Modernas, S.A. and Compania Nacional de Alimentos, S.A. by the Government of Cuba on October 13, 1960, claimant suffered a total loss of \$1,732,612.07 with respect to its 24% interest therein, within the meaning of Title V of the Act.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0064).


Accordingly, the Certification of Loss in the Proposed Decision is set aside and the following Certification of Loss will be entered, and in all other respects the Proposed Decision as amended herein is affirmed.

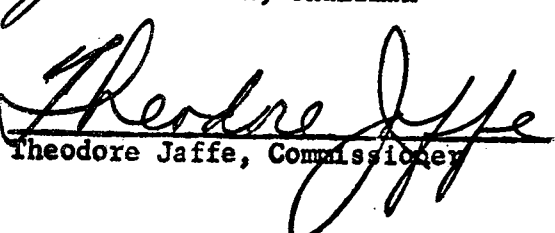
CERTIFICATION OF LOSS

The Commission certifies that GENERAL MILK COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Seven Hundred Thirty-two Thousand Six Hundred Twelve Dollars and Seven Cents (\$1,732,612.07) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

SEP 30 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

GENERAL MILK COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0273

Decision No. CU 1043

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by GENERAL MILK COMPANY in the amount of \$3,404,370.00 based upon the asserted loss of stockholder interests in Cuban entities.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record discloses that the claimant corporation was organized in the State of Delaware on September 3, 1926. The record further discloses that from at least October 13, 1960 until April 30, 1966, the claimant corporation was owned jointly by the Carnation Company (65%) and the Pet Milk Company (35%), both organized in the State of Delaware; and that from April 30, 1966 to presentation of this claim, the claimant corporation was wholly-owned by the Carnation Company. The record contains affidavits from a corporate officer of both the Carnation Company and the Pet Milk Company stating that at all times between October 13, 1960 and presentation of this claim, on July 23, 1965, more than 50% of their respective shareholders were nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

A principal officer of the Carnation Company states that as of January 1, 1967, 99% of the outstanding capital stock of the Carnation Company was held by citizens of the United States, and 1% was held by non-United States citizens.

The record reflects that claimant owned 9,480 shares (24%) of Compania Nacional de Alimentos, a Cuban corporation having principal offices at Presidente Zayas 104, Havana, Cuba and 1,440 shares (24%) of Latas Modernas, S. A., a Cuban corporation having principal offices at

No. 55 Twenty-Third Street, Vedado, Havana, Cuba. Compania Nacional de Alimentos operated two plants in Cuba for the manufacture of dairy products. Latas Modernas, S. A., conducted a can-making operation. Claimant contends that the properties of both corporations were confiscated by the Republic of Cuba without compensation.

Compania Nacional de Alimentos and Latas Modernas, S. A. were listed as nationalized by Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant states that it has received no compensation for the loss of its property. The Commission concludes that claimant sustained a loss as a result of nationalization of the aforesaid entities, pursuant to Law 890, and in the absence of evidence to the contrary, concludes that said loss was sustained on October 13, 1960. (See the Claim of Kramer, Marx, Greenlee & Backus, FGSC Claim No. CU-0105).

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated its loss as \$3,404,370.00. Claimant contends that the amount of its losses should be computed by ascertaining the average after tax income for Cia Nacional de Alimentos, S. A., and Latas Modernas, S. A., and average royalty income received by claimant for the three years preceding the loss, multiplying this sum by a factor of 15 in order to arrive at a fair value for its shareholder interest.

Claimant further states that in addition to the foregoing claim, if and when it may be required to make good under certain obligations in connection with the aforesaid Cuban companies, its claim would have to be increased as follows:

- (1) For the years 1960 through 1964, its share of expenditures made in connection with former employees of the Cuban companies totalled \$102,728.00.

- (2) Its share of potential liability under guaranties executed to secure loans to the Companies is asserted as follows:

Sun Life Assurance Company of Canada	\$180,000.00
Sun Life Assurance Company of Canada	180,000.00
Confederation Life Association	300,000.00

- (3) Interest due to said insurance companies on said loans as follows:

Sun Life to February 2, 1965	\$ 35,100.00
Sun Life to May 24, 1965	40,950.00
Confederation to May 19, 1965	68,250.00

Inasmuch as claimant has not yet established that it has sustained any loss as a result of these "contingent obligations," the Commission takes no action with respect to these items.

In support of its contention of loss the claimant has submitted balance sheets and income statements for the two Cuban corporations for the years 1957 - 1959. After careful consideration of all the evidence of record the Commission finds that the file contains no evidence in support of claimant's method of evaluation and that claimant has not sustained its contention that this method represents a valid measure of loss.

The balance sheets of Latas Modernas, S. A. and Compania Nacional de Alimentos on December 31, 1959 are set forth below:

Latas Modernas, S. A.

ASSETS

CURRENT ASSETS

Cash		\$ 113,923.81
Accounts receivable		
Customers	\$ 280,022.68	
Other	<u>7,573.00</u>	287,595.68
Inventories, at cost		
Raw materials and supplies	\$ 909,830.08	
Finished products	<u>16,134.55</u>	925,964.63
Tax on raw materials and tax refund claims		<u>53,582.21</u>
Total current assets		\$ 1,381,066.33
PROPERTY, PLANT, AND EQUIPMENT (at cost)	\$ 769,312.30	
Less reserve for depreciation	<u>44,389.66</u>	724,922.64
OTHER ASSETS AND DEFERRED CHARGES		54,464.32
TOTAL		<u>\$ 2,160,453.29</u>

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Latas Modernas, S. A.

LIABILITIES

CURRENT LIABILITIES

Bank loans and accrued interest	\$1,304,222.21
Accounts payable, accrued charges, etc.	110,303.20
Accrued taxes	<u>26,228.78</u>
Total current liabilities	\$1,440,754.19

CAPITAL

Authorized 10,000 shares of \$100.00 each, par value	<u>\$1,000,000.00</u>
Issued 6,000 shares of \$100.00 each, par value	\$600,000.00

EARNED SURPLUS

Balance, December 31, 1958	\$ 39,016.14	
Add net profit for the year ended December 31, 1959	<u>80,682.96</u>	
Balance, December 31, 1959	<u>119,699.10</u>	719,699.10

CONTINGENT LIABILITIES

In respect of letters of
guarantee - \$49,460.00

TOTAL

\$2,160,453.29

Compania Nacional de Alimentos

ASSETS

CURRENT ASSETS

Cash			\$ 372,168.77
Accounts receivable			
Customers	\$2,510,092.61		
Less reserve for doubtful accounts	<u>101,364.61</u>	\$2,408,728.00	
Other		<u>430,345.25</u>	2,839,073.25
Inventories, generally at lower of cost or market:			
Finished goods		\$3,771,019.38	
Raw materials and supplies		<u>1,046,016.35</u>	<u>4,817,035.73</u>
Total current assets			\$8,028,277.75
PROPERTY, PLANT, AND EQUIPMENT (at cost)		\$5,980,134.53	
Less reserve for depreciation		<u>1,846,924.79</u>	4,133,209.75
OTHER ASSETS AND DEFERRED CHARGES			189,150.30

TOTAL

\$12,350,637.80

Compania Nacional de Alimentos

LIABILITIES

CURRENT LIABILITIES

Bank loans and accrued interest	\$ 6,203,195.18
Accounts payable, accrued charges, etc.	1,849,929.84
Accrued taxes	<u>299,553.90</u>
Total current liabilities	\$ 8,352,678.92

DEFERRED INCOME

90,299.96

CAPITAL

Authorized 40,000 shares of \$100.00 each, par value	<u>\$4,000,000.00</u>
Issued 35,000* shares of \$100.00 each, par value, fully paid	\$3,500,000.00

EARNED SURPLUS

Balance, December 31, 1958	\$610,657.34		
Add net profit for the year ended December 31, 1959.	<u>297,001.58</u>		
	\$907,658.92		
Deduct stock dividend	<u>500,000.00</u>	<u>407,658.92</u>	3,907,658.92

CONTINGENT LIABILITIES

In respect of letters of
guarantee - \$143,117.71

TOTAL

\$12,350,637.80

* This had been increased to 39,500 before October 13, 1960.

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The balance sheets enumerate the assets, tangible and intangible, and the liabilities of the enterprises. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owners' equity, or net worth. The same result may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

The calculation of net worth of the Cuban entities is as follows:

Latas Modernas, S. A.

Total assets	\$2,160,453.29
Less current liabilities	<u>1,440,754.19</u>
Net Worth	\$ 719,699.10

Compania Nacional de Alimentos

Total assets	\$12,350,637.80
Less current and other contractual liabilities	<u>8,442,978.88</u>
Net Worth	\$ 3,907,658.92

The Commission concludes that as a result of nationalization of Latas Modernas, S. A. and Compania Nacional de Alimentos by the Government of Cuba on October 13, 1960, claimant suffered a loss of \$172,727.78 with respect to its 24% interest in Latas Modernas, S. A. and a loss of \$937,838.14 with respect to its 24% interest in Compania Nacional de Alimentos, within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

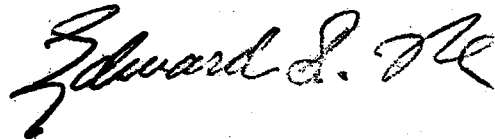
Accordingly the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

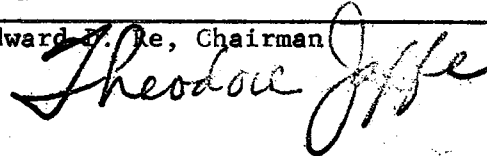
The Commission certifies that GENERAL MILK COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million One Hundred Ten Thousand Five Hundred Sixty-Five Dollars and Ninety-Two Cents (\$1,110,565.92) with interest thereon at 6% per annum from the date of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JAN 24 1968



Edward J. Re, Chairman



Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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